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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,555	10/08/2003	Lindy Brennan	1139.002C1	7779

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EXAMINER

BURNHAM, SARAH C

ART UNIT PAPER NUMBER

3636

DATE MAILED: 11/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/681,555

Applicant(s)

BRENNAN ET AL. 

Examiner

Sarah C. Burnham

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on August 20, 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) 43-56 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-19 and 21-26 is/are allowed.
- 6) ☐ Claim(s) 1,2,4,5,8-14,20,27-34 and 38-42 is/are rejected.
- 7) ☒ Claim(s) 3,6,7,32 and 35-37 is/are objected to.
- 8) ☒ Claim(s) 1-56 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-42, drawn to a ventilated vehicle seat, classified in class 297, subclass 452.21.
 - II. Claims 43-56, drawn to the method of forming a ventilated seat, classified in class 297, subclass 452.21.
2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made without inducing electrical current to flow through the heating elements. Heating elements need not be electrical but may be chemically actuated in response to body heat and/or pressure.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Christopher Voci on November 3, 2004 a provisional election was made with traverse to prosecute the invention of Group 1, claims 1-42. Affirmation of this election must be made by applicant in replying to this Office action. Claim 43-56 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 5, 8-9, 13 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following words/phrases lack sufficient antecedent basis:

- the foam cushion (claim 5, lines 3-4; claim 9, lines 2-3; claim 20, line 3)
- the pacer layer (claim 13, line 4)
- the passageway (claim 8, line 3; claim 8, line 4)

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 2, 5, 13, 27, 28, 30, 31, 34 and 41 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 102(b) as being anticipated by Larsson (6,003,950). With respect to claims 1 and 27, Larsson discloses a ventilated seat (1) for a vehicle, comprising: a vehicle seat (1) having a ventilated component selected from a seat cushion component (2) and a seat backrest component (3), at least one of which provides a seat cushion (7) and an air permeable trim surface (10) at occupant contact areas of the seat (1); an insert (11)(12)(15) that is open at its sides and located beneath the trim surface (10) of the ventilated component (2), the insert including a first layer (11) having a heater (12) integrated therein; a second layer (15) formed of spacer material (16), the second layer defining an open space (unlabeled) given that it is "air permeable" (column 4, line 15) and preferably "fibrous" (column 4, line 16); a fluid mover (26) in fluid communication with the insert (11)(12)(15) for moving air through the open space (unlabeled) and at least partially past an occupant in the seat; and a tubular structure or duct (41) for providing the fluid communication between the insert (11)(12)(15) and the fluid mover (26). The heater element (12) consists of a "think web with wires forming an electric heater 12" (column 4, lines 6-7).

With respect to claims 2 and 31, the spacer material (16) is "fibrous and can consist of horsehair, coconut fibers or synthetic material"(column 4, lines 16-17).

With respect to claims 5 and 34, the tubular structure or duct (41) is provided by the foam cushion (7) and defines a passageway (25) through the cushion (7).

With respect to claim 13 and 41, the fluid mover (126) is a suction device and therefore pulls air through the open space provided by the spacer layer (15).

With respect to claim 28, the spaces in the spacer material constitute a plurality of sub-passageways

With respect to claim 30, the heating elements are "a thin web of wires" (column 4, lines 6-7).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 4 and 33 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 103(a) as being unpatentable over Larsson (6,003,950) in view of Eksin et al. (6,541,737). As disclosed above, Larsson reveals all claimed elements with the exception of an adhesive layer for adhering the first layer (11) to the second layer (15).

Eskin discloses a seat surface (11) with multiple layers, including a heater layer (37), as seen in Figure 2 (column 4, lines 5-18). Eksin discloses an insert comprising multiple layers (35)(36) that are bonded together with adhesive (column 3, line 62).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use an adhesive, as taught by Eskin, to attach the first (11) and second (15) layers disclosed by Larsson together. Such a modification would reduce slippage between layers.

12. Claims 10-12 and 38-40 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 103(a) as being unpatentable over Larsson (6,003,950) in view of Faust (5,934,748). As disclosed above, Larsson reveals all claimed elements with the exception of a control unit to operate the fluid mover and heater layer and the use of a temperature sensor.

Faust discloses a ventilated seat with a control unit (34) for selectively operating a fluid mover (23), which provides airflow, and a heat layer (18)(21) (column 3, lines 19—23 and 35-36; column 4, lines 1-11). The control unit is configured to operate the heater layer and the fluid mover at tow of more different output levels (column 4, lines 13-46). The control unit is in signaling communication with a temperature sensor and the control unit is configured to activate the fluid mover if a relatively high temperature is sensed by the sensor and activate the heater is a relatively low temperature is sense by the sensor (Abstract).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify the ventilation seat of Larsson in view of Faust in order to provide optimal comfort by automatic temperature regulation.

13. Claims 14 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larsson (6,003,950) in view of Haupt et al. (US 2002/0096915). As disclosed above, Larsson reveals all claimed elements with the exception of a fluid mover adapted to push air through the ventilated component.

Haupt et al. teaches the use of a fan (16) which either pushes air into the ventilated seat with positive pressure or suctions air through the ventilated seat with negative pressure (paragraph [0019]).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to replaced the fluid mover (26) disclosed by Larsson with a fluid member (16) as taught by Haupt. Such a modification would allow for more powerful cooling of the seat with air from the vehicles air conditioner in an instance when the ambient temperature is very hot.

14. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Larsson (6,003,950) in view of Faust et al. (6,189,966). As disclosed above, Larsson reveals all claimed elements with the exception of a plurality of sub-passageways that extend radially from a center passageway.

Faust et al. teaches the use of a ventilator that takes air in axially and blow air out through the ventilated seat in a radial configuration (abstract).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to direct the air flow in such a manner so that it flows radially from the central passageway disclosed by Larsson. Such a modification would improve efficiency of the cooling system and increase seat occupant comfort.

Allowable Subject Matter

15. Claims 3, 6-7, 32, 35, 36, 37 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

16. Claim 8-9 and 20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

17. Claim 15-19 and 21-26 are allowed.

Response to Amendment/Arguments

18. The amendment filed on August 20, 2004 has been considered in its entirety. Remaining issues are detailed in the section above.

Applicant argues that Larsson does not disclose a heater element integrated with the first layer. The Examiner would like to point out element (12) which is described in Larsson specification as being a wire heater and it is clearly embedded beneath the first layer (11) and is therefore considered to be integrated therein.

Conclusion

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah C. Burnham whose telephone number is 703-305-7315. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCB
November 4, 2004


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